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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/628,877

07/28/2003

Michael J. Vincent

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TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

EXAMINER

THAKUR, VIREN A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 08/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/628,877

Applicant(s)

VINCENT ET AL.

Examiner

Viren Thakur

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/19/2006.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 2-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The above specified claims recite the limitation **“substantially matches”** and **“substantially spherical.”** It is unclear as to what constitutes said compartment being substantially spherical and said compartment substantially matching said second compartment.
3. Claims 4-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
 - a. Claim 4 and 5 recite the limitation **“facing in two different directions.”** It is unclear as to how two compartments that are spherical in shape can face in two different directions, when lying on the same plane.

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- b. Claim 6 recites the limitation **“second spherical section substantially facing said first spherical section in an opposing manner.”** It is unclear as to how two compartments that are spherical in shape can face each other in an opposing manner.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Hustad et al. (U.S. 5,657,873). Hustad et al. disclose a food package having a plurality of components (Figure 1, Item 30, Item 31, Item 32), capable of holding a plurality of food components that may be manually assembled by the user in preparing a food composition to consume. Hustad et al. further disclose that said food package could contain confections, condiments, and wafers (Column 6, Line 55-68). Since the invention of Hustad et al. holds meats, cheese, or confections, it is further known that said food package requires freezing or refrigeration.

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6. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Fleischer (U.S. 1,514,379). As recited in Claim 2, Fleischer discloses a food container having a plurality of curve shaped compartments (Figure 1, Item 11 and Item 14) for holding a confection such as ice cream (Line 15) and another dessert component (Line 16-17); wherein the curved shape of the compartment for the ice cream substantially matches the curved shape of the secondary compartment. It is known that the secondary compartment is capable of further holding other dessert components such as a cookie and a wafer. Additionally, said cookie or wafer must be contained within said secondary compartment and thus must match the shape of said secondary compartment. Furthermore, it is known that the second dessert component can be used to scoop out the ice cream or yogurt. As recited in Claim 7, Fleischer discloses a secondary food compartment (Figure 1, Item 14) having surfaces sloping downwardly and inward (Figure 1, Item 14) to assist removing the food component. Fleischer further discloses a utensil (Figure 1, Item 22) positioned atop the second compartment (Figure 1, Item 14).
7. Claims 2-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Cillario (U.S. 4,314,650). As recited in Claim 2, Cillario discloses a food kit for components of a chilled or frozen dessert (Column 1, Line 5-6). It is known that creamy confections include desserts such as ice cream, which

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requires freezing or chilling. Cillario further discloses said food kit having a plurality of components (Figure 1), having a substantially spherical shape, as recited in Claim 3, 4 and 6 (Figure 1, Item 28, Item 20); wherein a second compartment (Figure 1, Item 20) holds a second dessert component (Column 1, Line 29-34) that is capable of scooping out ice cream from the compartment. Since said second compartment has a curved spherical shape that matches the shape of said a compartment (Figure 1, Item 28), that holds the creamy confectionary product, it is known that the contents of said second compartment would also match in shape. It is further known that said food components are capable of being used to scoop out the creamy confectionary product. As further recited in Claims 4 and 6, Cillario discloses said first (Figure 1, Item 28) and said second (Figure 1, Item 20) spherical sections facing in two different directions. Since said second compartments contain a solid food product and said first compartment contains a creamy confectionary product, it is known that said solid food product can be used by the consumer to scoop the creamy confectionary product. Furthermore, since scooping using the solid food product is possible, dependent on the user's preferences the creamy confectionary product can be scooped in two directions that are perpendicular to each other, as recited in Claim 5. As further recited in Claim 7, Cillario discloses spoons (Figure 2, Item 40) displaced on top of said secondary compartment (Figure 2, Item 30). Nevertheless, it is

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known in the art to provide downwardly and inwardly sloping surfaces to assist in the removal of food items from said compartment.

8. Claims 1-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Wilson et al. (EP 115.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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11. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cillario (U.S. 4,314,650) in view of Hustad (U.S. 5,657,873) and D'Oliveira et al. (U.S. 5,429,266).

- c. With regard to Claim 7, Cillario discloses a package for a creamy confectionary product comprising a first spherical compartment for the creamy confection and a second compartment for an additional solid dessert component, wherein said solid dessert component can be used to scoop out the creamy confectionary component, as discussed above.

Cillario does not teach said secondary compartments further comprising opposing ear portions extending beyond the cylindrical portion and second compartment holding a plurality of stacked cookies or wafers in the cylindrical portion thereof; and said ear portions having surfaces sloping downwardly and inwardly to provide opposing spaces to permit the consumer to put his or her fingers on each side of a cookie in the stack to grip and remove the cookie.

Hustad teaches a food package having a plurality of compartments wherein said compartments can include confections and crackers (Column 6, Line 55-68), as discussed above. It is obvious that the food components, such as crackers, can be placed within the compartments of Hustad (Figure 1, Item 30, Item 32)

D'Oliveira et al. teach a food service tray having a plurality of compartments for the purpose of holding foodstuffs for consumption. D'Oliveira et al. further teach that the food service tray contains a secondary compartment (Figure 1, Item 20) having opposing ears (Figure 1, Not labeled, see near item 20; Figure 5, Item 72) for the purpose of aiding the user in removal of the utensil from the compartment (Column 6, Lines 8-10). D'Oliveira further teaches stacking within said compartment having opposing ears (Figure 5, Item 76; Column 6, Line 5-6).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Callario to include opposing ears to a compartment as taught by D'Oliveira et al. and holding a stack of wafers as taught by Hustad for the purpose of providing greater ease of removing a food item from a compartment. Such a modification ensures that the user will be able to correctly grip a food product without said food product slipping out of the user's grip. Such a modification further provides an additional food component that can be used to scoop the creamy confectionary product of Callario.

- d. With regard to Claim 8, Cillario teaches as discussed above. Cillario further teaches that spoons, displaced on top of said secondary food component in secondary compartment, (Figure 2,

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Item 40) can be used to assist in scooping said creamy confectionary product, as discussed above.

Cillario does not teach wherein the opposing ends of the spoon are respectively received in the opposing ear portions of the second compartment.

D'Oliveira et al. teach a food service tray having a plurality of compartments for the purpose of holding foodstuffs for consumption. D'Oliveira et al. further teach that the food service tray contains a secondary compartment (Figure 1, Item 20) having opposing ears (Figure 1, Not labeled, see near item 20; Figure 5, Item 72) for the purpose of aiding the user in removal of the utensil from the compartment (Column 6, Lines 8-10). D'Oliveira further teach opposing ends of a utensil (Figure 1, Not Labeled see sides adjacent to ears of compartment) received in the opposing ear portions.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Cillario to receive a utensil into the opposing ear portions as taught by D'Oliveira et al. for the purpose of providing a utensil to aid in scooping a food product that is secure within the compartment, easy to remove, and in close proximity to said food product; thus increasing the convenience to the user by not requiring the user to obtain a separate utensil for use with the food product.

12. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fleischer (U.S. 1,514,379) as applied to claims 2-6 above, and further in view of Privert (U.S. 5,922,376).

- a. With regard to Claim 7, Fleischer discloses a food container for ice cream and a secondary food product to be combined with ice cream, contained in a secondary container, as discussed above. Fleischer further

Fleischer does not teach a secondary compartment having two opposing ears extending outwardly from the cylindrical portion of the second food compartment, wherein said ear portions have surfaces sloping downwardly and inwardly to provide opposing spaces to permit the consumer to put his or her fingers on each side of a cookie in the stack to grip and remove the cookie.

Privert teaches a food and beverage package having a substantially cylindrical compartment (Figure 1, Item 16) having opposing ears (Figure 1, Not labeled, see corners of item 16), wherein said cylindrical compartment can contain a stack of crackers (Column 3, Line 28-36). Privert, thus further teaches providing spaces to assist in removal of the crackers from the compartment.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Fleischer to include opposing ears to the compartment holding a solid food product, as taught by Privert for the purpose of facilitating removal of the food product from the compartment. It is well known in the art to provide surfaces that slope downwardly and inwardly for the purpose of containing and assisting in removal of food products. Nevertheless, as taught by Privert such a modification further provides an additional type of food product that can be used to scoop the ice cream of Fleischer; therefore expanding the amount of flavors, textures and type of food products to be eaten with ice cream, to suit various users tastes.

- b. With regard to Claim 8, Fleischer teaches a spoon position on top of the secondary compartment.

Fleischer does not teach said spoon being received into the opposing ears of a secondary compartment.

Privert teaches opposing ears (Figure 1, Not labeled, see corners of item 16) for the purpose of enabling the user to easily grasp the stack of crackers in a secondary compartment (Figure 1, Item 16).

It would have been obvious to a person having ordinary skill in the art to modify Fleischer to position the spoon in the opposing ears of the secondary compartment, as taught by Privert for the

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purpose of providing more compact packaging which will ensure that the spoon will not be lost upon opening the packaging.

Positioning the spoon within ears further secures the spoon within the packaging to ensure that the spoon is readily available upon opening the package.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. 6,048,558 discloses a food container with a plurality of compartments for holding several different food products. WO9742095 discloses a plastic container with an eating utensil that is attached therewith and further contains opposing ears to assist in removing the utensil.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viren Thakur whose telephone number is (571)-272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571)272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



8/21/2006

Viren Thakur
Patent Examiner
Art Unit: 1761



LIEN TRAN
PRIMARY EXAMINER

Group 1700